

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTEGRATED HEALTH SERVICES OF )  
CLIFF MANOR, INC., INTEGRATED )  
HEALTH SERVICES AT RIVERBEND, )  
INTEGRATED HEALTH SERVICES AT )  
SOMERSET VALLEY, INC., ALPINE )  
MANOR, INC., BRIARCLIFF NURSING )  
HOME, INC., INTEGRATED HEALTH GROUP, )  
SPRING CREEK OF IHS, INC., )  
FIRELANDS OF IHS, INC., ELM CREEK OF )  
IHS, INC., and IHS LONG TERM CARE )  
SERVICES, INC., )

Plaintiffs,

V.

THCI COMPANY LLC,

Defendant,

V.

ABE BRIARWOOD CORPORATION and  
JOHN DOES 1-10,

Additional Counterclaim  
Defendants,

Civil Action No. 04-910 (GMS)

Re: Docket Nos. 183, 184, 186 and 191

**PLAINTIFFS' REPLY ON ITS MOTION TO AMEND SCHEDULING ORDER**

Plaintiffs herein and additional counterclaim defendant Abe Briarwood Corporation (collectively, “Plaintiffs”), for their reply on their Motion to Amend Scheduling Order, submit as follows:

1. Defendant has chosen to assert that this motion is an impermissible discovery protective order motion, and, purportedly for that reason, has elected not to respond on the merits. The contention is without merit, and defendant is left with no

excuse for failure to assert any defense to the motion, if it had one. Accordingly, the motion should be granted.

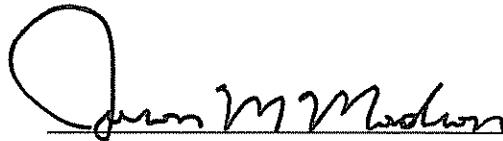
2. First: Even assuming this motion is to be treated at this time as a discovery motion (but see infra), the prior oral directives of the Court, that discovery proceed, are subject to change if circumstances warrant, and here such circumstances do warrant. Plaintiffs are therefore entitled to ask the Court to change those directives. Thus, as noted in defendant's Opposition to this motion, those oral directives of the Court were expressed during teleconferences on January 13 and February 28, 2006. Since those teleconferences, however, there have been developments which, it is respectfully submitted, warrant such change: (i) On March 21, 2006, this Court decided the supposedly related appeal pending from an Order of the Bankruptcy Court (Docket No. 03-610). That removed any possible argument that this Court had jurisdiction over this case because of the pendency of the "related" appeal. (ii) On March 30, 2006, Plaintiffs moved to remand this action to the State Court from which it was initially removed, which motion is now under advisement. For the reasons stated in Plaintiffs' moving papers, it is inappropriate to continue with this case, for the Court to decide substantive motions or the discovery motions presently before it, or for the parties to continue with discovery, until the Court decides the motion to remand. (iii) As is documented in the moving papers herein, defendant's discovery requests have not been directed to the issues in the case, and have been abusive, in an attempt to force a settlement on their meritless counterclaim. This Court's earlier directives regarding discovery in general do not give defendant carte blanche to proceed with discovery in an abusive manner, impervious to protective order motions.

3. It should also be noted that, while this motion to amend the Scheduling Order could also be considered a motion for a discovery protective order (and Plaintiffs have requested a conference with the Court for that very reason), neither Plaintiffs nor defendants have treated the motion in that light, pending the conference with the Court. Thus, discovery by defendant has indeed continued.

4. Finally, as the Court is aware, Plaintiffs have offered to turn over the nursing home facilities to defendant, as defendant has repeatedly claimed that it seeks. The Court should be aware that counsel will be meeting this week to discuss the matter, and it is anticipated that the turnover will proceed amicably.

5. The motion should therefore be in all respects granted.

Dated: August 15, 2006  
Wilmington, Delaware



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